(37)

HIGH COURT OF CHHATTISGARH: BILASPUR
S.B. HON'BLE SHRI VIJAY KUMAR SHRIVASTAVA, J
MISCELLANEOUS APPEAL NO.31 of 2006

Appellant :
Vehicle owner

Shri Jai Bhagwan Agarwal
s/o Shri Jankidas Agarwal
r/o Pithora
Tehsil - Mahasamund
Raipur CG

Vs.

Respondent:
Claimant

Ram Kumar Devagaon
s/o Shri Sonuram Devagaon
r/o Pithora
Tehsil - Mahasamund
Raipur CG

PRESENT:
Shri HS Patel, counsel for the appellant.
Shri Saurabh Dangi, counsel for the respondent.

O R D E R

(Passed on 15th February 2006)

This appeal under Order 43 Rule 1(D) of the CPC is directed against the order dated 01.08.1998 passed in MJC No.6/96 by the First Additional Motor Accidents Claim Tribunal Mahasamund, by which the application filed by the appellant under Order IX Rule 13 of the CPC has been dismissed.

2) Respondent/claimant filed an application under Motor Vehicle Act claiming compensation of Rs.1,10,000/- (Rupees one lakh ten thousand) averring that the truck No.CPT/9055 owned by the appellant and driven by Ram Prasad on 10.06.1991 met with an

accident. The truck driver was driving the vehicle rashly and negligently. As a result of that accident, respondent/claimant sustained injuries to his person and property. The case was registered as claim case No.19/92.

3) Due to non-representation of the appellant, the claim tribunal proceeded ex-parte against the appellant and after proceeding with the case in accordance with law, passed an ex-parte award on 20.07.1995. The appellant for setting aside the ex-parte award, filed an application under Order IX Rule 13, read with Section 151 of the CPC on the ground that he appointed Shri Thite as his counsel to appear and plead his case; when he did not receive any communication from him; he enquired the matter and came to know that on 20.07.1995 an ex-parte award has been passed against him. His application was opposed by the respondent/claimant.

4) Learned Tribunal after appreciating the evidence, vide impugned order, rejected the application filed by the appellant.

5) Under Order IX Rule 13 of the CPC, ex-parte award can be set aside if it is proved that notice was not duly served or the applicant/appellant was prevented by any sufficient cause from appearing when the case was called for hearing. The instant case does not relate to non-service of notice, therefore, if the application has

been filed within time and sufficient cause for non-appearance on the dates of hearing is proved, ex-parte award can be set aside.

6) Under Article 123 of the Limitation Act 1963, thirty days time from the date of award is allowed for filing the application to set aside the ex-parte award.

7) In claim case No.19/92, an ex-parte award has been passed on 20.07.1995. The appellant has filed an application under Order IX Rule 13 read with Section 151 on 23.08.1996 i.e after a year from passing the ex-parte award. Admittedly, the appellant did not file any application under Section 5 of the Limitation Act for condonation of delay in filing the application. Learned Tribunal correctly held that for setting aside the ex-parte award, period commences from 20.07.1995. The appellant has filed his application after the period of limitation without filing any application for condonation of delay under Section 5 of the Limitation Act.

8) Jai Bhagwan Agarwal (AW-1) alone has been examined by the appellant, who in his statement deposed that after receiving notice, he appointed an advocate Shri Thite; thereafter from time to time he met with him and enquired about his case, but in the cross-examination he deposed contrary to it. Therefore, his evidence does not appear to be credible, that apart, Advocate Thite has not been

produced to support the case of the appellant.

9) Learned Tribunal after due appreciation of the evidence, held that the appellant without reasonable and sufficient cause remained absent when the case was called for hearing. Learned Tribunal also held the application to be barred by limitation. I am of the opinion that no irregularity or illegality has been committed by the Tribunal so as to call for any interference by this Court.

10) In the result, the appeal fails and accordingly, it is dismissed.

11) Parties to bear their own costs.

Sd/-
V.K.Shrivastava
Judge

[redacted]idma